



***SOCC – CHESTERFIELD
EMPOWERING NEIGHBORHOODS FORUM
Saturday, February 11, 2012***

Community Associations and Covenant
Enforcement

presenter:

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O v e r v i e w

Covenants – What are they?

- recorded
 - chain of title
 - legal notice
 - subsequent purchasers
- Why have them?
 - vision of developer
 - requirement of local government
 - unique property feature

Legal Foundations



Counsel sensed that the panel might not be taking his argument as seriously as he had hoped.

Legal Foundations

Property Owners Associations – Governing Documents

- Declaration of Covenants, Conditions & Restrictions (“CC&Rs”; “Declaration”; “Covenants”)
 - Imposes land use restrictions and obligations on lots
 - Recorded in land records
- Articles of Incorporation
 - Creates corporate entity & basic purpose for Assn
- Bylaws
 - Part of corporate records
 - “Nuts & bolts” of corporate operations
- Rules & Regulations, Book of Resolutions
 - Adopted by Board of Directors
 - Clarifications, supplements, policies



Legal Foundations

- **Governing Virginia Law**

- Property Owners' Association Act
 - Owner rights; meetings; document disclosure; resales
 - Liens; assessment of charges; suspension of rights
- Nonstock Corporation Act
- Local law – County ordinances
 - Use of land, zoning, consumer issues

- **Key federal laws**

- Fair Housing Act
- FCC Regulations

Role of Board of Directors

- **Defined by governing documents**
 - Operate, manage, administer common areas
 - Determine assessments
 - Enforce covenants
 - “All powers not reserved to the owners”
- **Supervisory role**
 - Set policy, oversee management
 - Making decisions does not mean weeding

Roles of Other Players

- **Committees**
 - Limited tasks assigned by docs or Board
 - Covenant enforcement
- **Owners**
 - “customers”; “shareholders”; “members”
- **Management Agent**
 - Carries out day-to-day tasks
 - Assists the Board in making decisions
 - Expert advice
- **Other professionals** (Accountants; lawyers; engineers; contractors)
 - Hire as needed – like any business

Covenant & Rules Enforcement



Covenant and Rules Enforcement

- **What is Enforced?**
 - Recorded Covenants
 - Board-Adopted Rules
 - Architectural Standards
- **Who Enforces?**
 - Association – through Board or Arch. Control Committee
 - Other lot owners







Covenant and Rules Enforcement

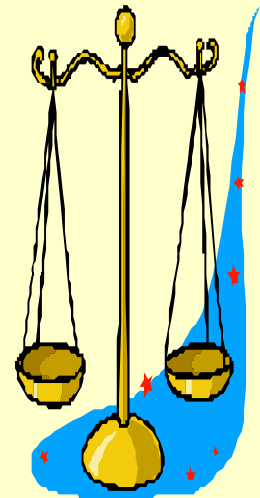
- **Methods of Enforcement**
 - Education and Communication
 - Newsletters / Websites / Reminders
 - Neighborly approach – friendly, firm requests for compliance
 - **Cease & Desist Demand Letter**
 - Written Notice of Violation
 - Opportunity to Cure – follow-up inspections

Covenant and Rules Enforcement

- **Assessments of Charges (a.k.a. “fines”)**
 - Written Notice of Violation Stating that Charges Will Be Assessed (\$10 per day for up to 90 days for continuing violations; \$50 per single violation)
 - Opportunity to be heard before charges assessed (Law requires decision in 7 days)
 - Charges are incentive, not income
- **Self-Help**
 - Use caution, sparingly - check documents for authority - notice to owner

Covenant & Rules Enforcement

- **Litigation**
 - Injunction/Court Order - contempt for failure to obey
 - Law does not always favor restrictions – strictly construed
 - Case by case – weigh circumstances
 - Watch costs & attorneys fees



Final Thoughts – Successful Boards

- Education – understand your job
- Good advice – don't reinvent the wheel
- Treat Assn like a business
- Treat all players – even difficult members – with respect – every action makes a record
- Be reasonable

Covenants – The Macro Perspective

- Bargain involves surrender of some freedom
- Clash of selfish desires v. binding bargain
- Solutions for covenants that don't work
 - Amend
 - Move

Final thought...



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